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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/309,844	05/11/1999	WILLIAM PACK	1002-0568	8032

7590 08/26/2003

JAMES R. SMITH. CATERPILLAR INC.  
INTELLECTUAL PROPERTY DEPT.  
AB6490. 100 N.E ADAMS STREET ,  
PEORIA,, IL 61629-6490

EXAMINER

RESTIFO, JEFFREY J

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/309,844

Applicant(s)

PACK, WILLIAM

Examiner

Jeffrey J. Restifo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11-17 and 19-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 11-17 and 19-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Transitional After Final Practice***

1. In view of the appeal brief filed on 6/4/03, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-9, 11-17, and 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Couse (US 2,789,647 A) and further in view of Young (US 2,228,550 A).

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Couse discloses a work vehicle comprising a main frame 2, an engine enclosure 1, a cab assembly 5, a work implement (or truck bed) "W", a ground engaging mechanism (or wheels) 3,4, an engine assembly 6, an engine fan 7, a transmission (conventional), and a radiator assembly 19 with cooling core 20, said radiator located outside the engine enclosure having a conduit (or pipe) 26 with one end attached to said radiator and a second end attached to said engine for transporting cooling fluid (or water), as shown in figure 1. Couse does not disclose the radiator as having a radiator fan or the radiator as having an upper edge being positioned at an angle less than 90 degrees relative to a longitudinal axis of the vehicle for allowing a larger sized radiator to fit in a smaller sized compartment. Young does disclose a radiator 20,26,27 for placement in a vehicle compartment 10 at an angle less than 90 degrees for allowing a larger radiator to fit in a smaller compartment, as shown in figure 2 and recited in column 3, lines 14-18. It would have been obvious to one having ordinary skill in the art at the time the invention to have provided the vehicle of Couse with the angled radiator of Young in order to allow a larger radiator with increased cooling ability to fit in a smaller compartment and thus take up less space. Examiner note: ~~although~~ *BF*  
~~note:~~ *8-20-3* Although Young does not disclose the radiator as being angled horizontally it would be well within the knowledge of one trained in the art to angle the radiator horizontally rather than vertically without undue experimentation in order to achieve the same benefits of the invention.

With respect to the separate radiator fan recited in claims 6, 14, and 20, the use of a fan adjacent the radiator core is conventional and has been given little patentable

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weight, and therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the radiator assembly of Couse and Young with a separate radiator fan in order to prevent overheating of the radiator.

With respect to claims 19 and 27, the recitation of the limitation “devoid a radiator assembly” has been given little patentable weight because the auxiliary radiator 8 of Couse could easily be removed without affecting the function and benefits of the invention.

With respect to claims 23 and 24, the vertical distances between the front hood and the frame relative to the vertical distance between the upper edge of the radiator and the frame do not appear to be critical to the function of the invention because the radiator could easily be lowered or raised without altering the function and therefore are viewed as a matter of design choice, see In re Rose, 105 USPQ 237 (CCPA 1955). Further, the heights are based on the size of the engine, cabin, windshield, etc., and these sizes can all be altered in order to achieve a desired hood slope.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 2-9, 11-17, and 19-28 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the applicant's arguments concerning claims 2-9, 11-17, and 19-23, the independent claims 2, 11, and 19 recite “a linear extension of the upper edge” of the radiator, however, radiators can have multiple top edges, which extend in all directions, which could easily form angles with the longitudinal axis of the vehicle. The

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examiner suggests the applicant further define that the "radiator's longitudinal axis" forms an angle with the vehicle's longitudinal axis, which may be favorable, however, take note of the newly cited reference of Lea, which discloses angled radiators relative to a vehicle longitudinal axis.

With respect to the applicant's arguments concerning claims 24-28, simply claiming relative heights of the front of the hood relative to the top surface of the radiator is considered a matter of design choice because the front hood can be made at a variety of heights without altering the function of the cooling arrangement and therefore is not considered critical to the invention and has been given little patentable weight.

### ***Conclusion***

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hauser '641 discloses an angled radiator of interest.

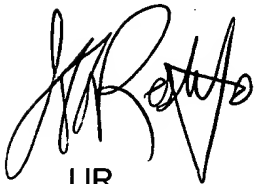
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



JJR

August 19, 2003

Jeffrey J. Restifo  
Examiner  
Art Unit 3618

  
**BRYAN FISCHMANN**  
**PATENT EXAMINER**